

Michael R. Brown, Chairman
Kevin S. Carter, Director

MINUTES OF THE MEETING OF THE
SCHOOL & INSTITUTIONAL TRUST LANDS ADMINISTRATION
BOARD OF TRUSTEES

DATE: OCTOBER 13, 2011

PLACE: SALT LAKE CITY, UTAH

ATTENDING: BOARD

Michael R. Brown
Steve Ostler
James Lekas
David Ure
Louis Cononelos

STAFF

Kevin S. Carter
Kim Christy
Doug Buchi
Dave Hebertson
Tom Faddies
Lisa Schneider
John Andrews
Wendy Peterson
Ron Carlson
Lynda Belnap
Nannette Johnson

OTHERS IN ATTENDANCE

Martell Menlove, State Office of Education
Margaret Bird, State Office of Education
Tim Donaldson, State Office of Education
Paula Plant, State Office of Education
Karen Rupp, State Office of Education

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Chairman Brown welcomed those present and thanked them for their attendance. He extended a thank you to staff for the work to organize the tour of Utah County trust lands the previous day. Those who attended got to see a good preview of the issues, both the opportunities and the problems. Specifically, thank you to Kim Christy and Doug Buchi, and everyone who helped, thank you on behalf of all the Board members.

Mr. Dan Lofgren and Mr. Mike Mower are excused from today's meeting for other commitments.

1. Approval of Board Minutes

The Board approved the minutes of September 8, 2011.

Cononelos/Ure Unanimously approved.

"I move that we approve the Board minutes of September 8, 2011."

Roll Call:

Mr. Ure - - yes	Mr. Cononelos - - yes
Mr. Ostler - - yes	Mr. Lekas - - yes
Mr. Brown - - yes	

2. Confirmation of Upcoming Meeting Dates

The Board, without motion, confirmed the following upcoming meeting dates:

November 17 - - Salt Lake City
December - - No Meeting

A projected schedule for 2012 will be presented at the next Board meeting. Director Carter told the Board that the Western States Land Commissioners Association (WSLCA) meeting is the second week of January. They will be meeting in Austin, Texas. As a result, the date for Board meeting will likely be January 19th. If Board members are interested in attending WSLCA, the dates are from January 8th through the 12th. Registration deadline is December 1.

3. Director's Report

a. Director's Update on Issues

Director Carter reported that Mr. Lofgren joined him and Lisa Schneider at the FY2013 budget hearing with the Governor's Office. He pointed out that the people at the budget hearings understand our mission and our unique funding situation. The results of the meeting were positive.

Kevin Carter and John Andrews recently went to Washington D.C. to meet with Congress and congressional staff members along with members of conservation organizations. Director Carter indicated that Senator Lee was very interested in the issues and put off other meetings in order to stay with the topic. They also met with Congressman Bishop directly and staff in some of the other offices. Director Carter indicated they had detailed and focused discussions with all of them.

3. Director's Report (cont'd)

a. Directors Update on Issues (cont'd)

The county land bill process is on hold right now. The Governor has a group he calls the Balanced Resources Council. It is composed of a number of people across the spectrum from passionate conservation groups and equally passionate folks that are pushing development and use of lands. At its last meeting, Representative Mike Noel identified what he thinks should be the minimum standards that the State of Utah should expect if any congressional land bill goes forward. It is the Director's opinion that those standards essentially mean no land deals because they impose restrictions that do not provide anything for the conservation side of the equation. Without conservation support, previous land bills would have gone nowhere and future land bills may not go anywhere.

Director Carter reminded the Board that it has a policy in place that states we do not support any bill that does not take care of captured trust lands. At first, there was a reasonable amount of resistance by the counties and even some resentment because of the position we have taken. Now it appears that the land exchange component of the land bill is the only part in which they are interested. We are the sole purpose for moving forward because of our opportunities that our acquisition of federal land gives to economic development opportunities and revenues coming back into the counties.

We are seeing the dynamics right now where people are just unable to come to a consensus on how land should be protected or if it should be protected. They are seeing there are advantages to land exchanges.

We believe we have a good start on a proposal in San Juan County. We are very comfortable with our analysis with what lands we need to get out of and what lands we should keep. We are starting to move forward on those discussions to firm up the deal.

In Piute County, the citizenry rose up against the commission and against the land bill process. They thought they were ready. It appears that bill may not be going anywhere.

Emery County is moving along using a grass-roots approach involving stakeholders. However, they may be a long way from a consensus. Even if they do come to a consensus locally, what they are moving towards does not satisfy the standards that Representative Noel set. The proposal is not likely to pass the legislature.

San Juan County also has issues. We do not anticipate any of these moving forward soon.

It appears no bills will get out of the state legislature unless they pass Representative Noel's standards.

Mr. Ure wondered if there is a possibility of another state having the same problem and are we working with other states to find common ground; i.e. Nevada. He suggests we could pull the majority leader of the senate in our direction to make things work. Chairman Brown asked if Mr. Ure meant a three-way exchange? Mr. Ure said he meant they would have their issues and we would have ours, but we could have them going together and have Senator Reed involved.

Director Carter reported that Senator Reed started the ball rolling in Nevada on county land bills. Washington County had Senator Bennett pursue a similar process. Utah did not get as good a deal as

3. Director's Report (cont'd)

a. Directors Update on Issues (cont'd)

the Nevada counties got. The difficulty we have in pairing with Nevada is they do not have any trust lands. At statehood, Nevada bargained with Congress to have the right to select several million acres instead of having them all over the state. They sold those lands and now they have a couple thousand acres of trust land. Our models are different.

b. Associate Director's Report

i. Concurrence in Revisions of Adjudicative Proceedings Rules - - R850-8

John Andrews reviewed statutory responsibilities of the Board to hear appeals that dissatisfied customers raise. The public has the right to appeal those decisions. A scenario may be similar to when the environmental community disagreed with a decision to issue oil and gas leases. They appealed to the Board for purpose of delay and to cause us to pull the items off an oil and gas auction. In response, we looked at national parks decisions. It stated that there is no inherent right of administrative review nor should there be as a matter of policy for the agency's day-to-day real estate decisions. A third party cannot challenge a sale making it impossible to manage trust lands.

As part of the revisions to the Trust Lands Management Act, included is a provision that there is no inherent right of administrative review of agency decisions to lease, exchange, or sell property. If someone thinks the agency is acting illegally in choosing to sell a piece of property, their remedy is to go to the courts and get an injunction to stop the sale; but there is not a right to appeal internally. These revisions are designed to incorporate that change in our adjudicative review.

The second thing this addresses is the appeal "cure" period and what is in some of our older leases. These rules clear up the confusion as to that appeal time and what is in the statute or lease.

Mr. Ure stated that, as a Board member, he doesn't want to give up the right for the Board to hear anything that they would like to hear. Mr. Andrews noted that legislation has already taken some of that away. Any action that we take that affects a third party (in default, etc.), they will have the right of appeal to the Board. That which is beyond appeal is the decision to dispose of property. It can be challenged in the court, but not appealed to the Board. Mr. Ure indicated he is fine with this.

Chairman Brown indicated it may not be necessary for Mr. Andrews to go through each revision, as the changes have already been outlined in the information sent to the Board.

Mr. Andrews asked that the Board concur with the proposed rule.

Cononelos/Ostler. Unanimously approved.

"I move that we concur with the proposed rule."

Roll Call:

Mr. Ure - - yes	Mr. Cononelos - - yes
Mr. Ostler - - yes	Mr. Lekas - - yes
Mr. Brown - - yes	

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3. Director's Report (cont'd)

b. Associate Director's Report (cont'd)

ii. Public Lands Issues Update

Mr. Andrews reported he believes that the county land bills seem they will not move forward in less than a four to five-year time frame. A land exchange is not going to get the support of the environmental community unless the state is willing to sit down and deal with the environmental community on conservation designations. Representative Noel's position will not allow that to happen.

The difference now than when we were successful in the past was that the Secretary of the Interior was very interested in passing land exchanges. That is not necessarily the case now.

The agency has been working with the Western States Land Commissioners Association to create a proposal that would be west-wide and allow us to relinquish lands in wilderness study areas and national monuments and select in-lieu replacement lands. The other western states have national monuments. We traded out of ours, but they have not been as successful. They are supportive of a non-exchange process that would allow them to get out of their in-holdings issues. Representative Bishop will be introducing that proposal with co-sponsorship from probably five other states in Congress within two to three weeks.

There is a proposal that allows us to select additional lands in the Hill Creek Extension of the northern Ute Reservation as legislation that Congressman Matheson is sponsoring. We have about 18,000 acres of mineral-only land. The Tribe manages that area as Tribal wilderness. We will trade out of that and into the northeastern section. We would lease those lands to the Tribal energy company. We have not expended resources to push forward, but have relied on the Tribe to do so. That will be modified and reintroduced. Congressman Matheson and Senator Hatch will reintroduce the proposal in the next few weeks. Mr. Andrews can give more background for those interested.

Mr. Ure asked if they have to have legislation introduced before they can piggy-back on something else. They will actually have a hearing on legislation that is unnumbered, but they generally need to introduce it before anything happens.

In Daggett County they are in a perpetual state of financial distress because they are remote and do not have a lot of population or resources. They have Flaming Gorge Reservoir, which is a national recreational area managed by the Forest Service. The current Daggett County Commission has determined it would be great if they could get a marina resort development. Daggett County would like SITLA to trade into several acres near the marina. We are supportive of the concept. They are moving forward too quickly because they are not communicating with the Forest Service. They have gone directly to the legislature with a Resolution of Support and have not involved us to do so. We are trying to work with them to jump through environmental hoops, but it seems to be moving forward without our involvement.

Chairman Brown stated the "word on the street" is that Secretary Salazar is assembling a "crown jewels" list. How are we protecting ourselves from this? Mr. Andrews stated the San Rafael Swell and the Canyonlands area are some great targets. The agency has been working on issues should this occur. The agency hopes that the WSLCA bill could work in a situation like this. Representative Noel's unwillingness to discuss any type of wilderness is just asking for Utah to get a monument to be

3. Director's Report (cont'd)

b. Associate Director's Report (cont'd)

ii. Public Lands Issues Update (cont'd)

created by the President's designation. We have heard from Congressman Bishop that the Secretary promised him that there would be no designation in Utah. The agency needs to have a ready-made land exchange proposal. Mr. Andrews noted the circumstances are very similar to the 1996 situation when the President designated the Grand Staircase-Escalante National Monument.

It has been indicated this is not a total list of what SUWA wants. Margaret Bird suggested the agency needs to get this list very soon and have staff look at it and see what the agency cannot live with as far as mineral issues, etc. She feels there is a very short time frame to act on this and feels it would be wise to deal with this now rather than after it is taken to Congress.

Mr. Andrews noted that much of the work Ms. Bird is suggesting has been noted in our mineral reviews. Over the last year or so, the agency has done these analyses on the county land bill issues. Grand County has a county wilderness proposal that goes back to 1995. The agency has not worked with the Henry Mountains if that area is on the list, but there has been work on other areas.

Secretary Salazar said they would attempt to find local wilderness proposals that had local support and only look at those areas that did have local support for designation. This should be a voluntary process. In Utah, the voluntary process has taken place in Emery County, and San Juan County has been stymied by the legislature. If it is voluntary in Utah, nothing is likely to happen.

Ms. Bird expressed concern about the "crown jewel" issue. Secretary Salazar will present to Congress in mid-October the list of crown jewels. There have been articles in the paper that Idaho and Wyoming found no crown jewels in their states. Colorado found about six. Paula Plant called John Harja in the Governor's office. He had a long list from Secretary Salazar that the Bureau of Land Management had defined as "crown jewels." Ms. Bird would like a copy of that list and see how many of those sites have trust lands with minerals.

Ms. Bird emphasized the concern to see if there are things on the list that we need to get off the list and be reactive now instead of responsive when the list is out.

Mr. Ure suggested we meet with Mr. Juan Palma to see what is on the list.

Ms. Plant noted that this is a letter written to some of the counties that Mr. Harja was able to get a copy of. The letter contains recommendations from some counties that state what should be on the list. Ms. Plant noted she is concerned that the public support is because the lands are in the Red Rock Wilderness process. That should not constitute "public support." On the letter between Mr. Palma and the counties, Mr. Harja was listed as receiving a "carbon copy," but found out about the letter from the counties. Director Carter stated he will talk with Mr. Harja on this issue.

Mr. Cononelos expressed a concern that, when the Secretary announced the abeyance of the wild lands policy, it was determined that we would not file suit, but let the state protect our interest. He

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3. Director's Report (cont'd)

b. Associate Director's Report (cont'd)

ii. Public Lands Issues Update (cont'd)

questioned whether that provides us with the necessary protection. He is not sure that is the correct way to proceed. Is there a distinction between what wild lands are and what "crown jewels" would be?

John Andrews indicated Secretary Salazar said the crown jewels are to be based on a consensus public nomination process, whereas wild lands would exist without any consent or community involvement. Wild lands are everything that fit a criteria. Crown Jewels become a subset of wild lands.

Director Carter stated one is a consequence of the other. When the Secretary saw how much turmoil the wild lands caused, he developed the "Crown Jewels" approach.

Mr. Connelos asked how people weigh in if they do not feel something should be designated as a crown jewel. Mr. Andrews pointed out that most counties are using local government to collect the public opinion and manage that information, and the information can be passed through their county commission.

Ms. Bird stated there is a document that the Feds have produced that has specific items about wilderness characteristics. This came out in July. She feels like it was a looser definition of wilderness designation.

Mr. Lekas stated he does not think we should concern ourselves with whether the crown jewels are different than wild lands. We need to be concerned about all the activities that are going on. We should get a copy of the letter to see what is going on.

Chairman Brown mentioned that Director Carter indicated he can meet with Mr. Harja and get a copy of the letter or letters and report back to the Board on what is going on. He asked Mr. Andrews to communicate to the Board what he finds out about these issues. The Board members and beneficiaries just want to make sure of where we are in our preparation and what is going on with these issues.

4. Chairman's Report

a. Beneficiary Report

i. School Children's Trust Bill

Chairman Brown explained that this bill is out of the Board's purview and the Board will be offering an endorsement of the proposal.

Tim Donaldson introduced the State Board Rule changes indicating that over the last few years the State Board has determined there are some areas they want to put into rules and others into statute. Many of the changes were motivated by information in a legislative audit released in early 2009. The audit defined concern that the agency is not clearly outlined. There are five provisions that are defined

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4. Chairman's Report (cont'd)
 - a. Beneficiary Report (cont'd)
 - i. School Children's Trust Bill (cont'd)

in the School Children's Trust Bill. He presented this to the Board through a power-point presentation as follows:

Overview

- State Board Rule Changes
 - Informational Update
- School Children's Trust Bill
 - Five Provisions, 1 by 1

Selected State Board Rule Changes

R277-477-4

- School Children's Trust Section Individuals
 - Possess professional qualifications pertinent to the purposes and activities of the trust, in areas such as trust law, finance, real estate, energy development, etc.
 - May or may not have experience in public schools and may or may not require a teaching license
- School Children's Trust Section shall assist USBE and Superintendent in
 - Representing current and future beneficiaries to SITLA, Treasurer, and AG
 - Encourage and assist education community in advocacy on behalf of schools on matters of federal, state, and local land policy as they affect school funding and the long term growth of the school trust

2112 Session

- Has unanimous support of the State Board of Education
- Sponsor Representative Mike Noel (R-Kanab)
- Support by Representative Mel Brown (R-Coalville)
- Seeking SITLA Board of Trustees and Administration Feedback and Support

1. Primary Beneficiary Representative Definition

53-1-103(4)

- "Primary beneficiary representative" means the State Board of Education on behalf of the common school trust, the Institution for the Blind trust, and the School for the Deaf trust.

Talking Points

- 96% of the lands managed by SITLA are school trust
- Intent to not deny (nor add) standing to UEP, PTA, School Boards, but to be neutral on the issue of legal standing
- Doyle example

4. Chairman's Report (cont'd)

a. Beneficiary Report (cont'd)

i. School Children's Trust Bill (cont'd)

2. Nominating Committee

53C-1-203

- (b) ~~The governor~~ There shall be appointed five members to the nominating committee as follows:
 - (i) one individual ~~from a nomination list of at least two names of individuals~~ knowledgeable about institutional trust lands ~~submitted~~ shall be appointed by the University of Utah and Utah State University on an alternating basis every four years;
 - (ii) one individual ~~from a nomination list of at least two names submitted~~ shall be appointed by the livestock industry;
 - (iii) one individual from a nomination list of at least two names submitted shall be appointed by the Utah Petroleum Association;
 - (iv) one individual from a nomination list of at least two names submitted shall be appointed by the Utah Mining Association; and
 - (v) one individual from a nomination list of at least two names submitted shall be appointed by the executive director of the Department of Natural Resources after consultation with statewide wildlife and conservation organizations.
 - Only removed the Governor's selection from the Nominating Committee positions
 - Does NOT remove the Governor from the actual SITLA Board Member selection
 - Intended to expedite the Nominating Committee process
 - Governor's Office default position to oppose anything that diminishes Governor's power
 - Working with Governor's Office on this
 - Will remove if Governor decides to oppose

3. Beneficiary Right to Inspect/Trustee Duty to Notify

53C-1-303 (The SITLA Director shall...)

- notify the primary beneficiary representative's designee regarding the school trust, the Institution for the Blind Trust, and the School for the Deaf Trust on major items which the trustee knows or ought to know may be useful to the primary beneficiary representative's designee in protecting beneficiary rights.
- (j) permit the primary beneficiary representative's designee regarding the school trust, the Institution for the Blind Trust, and the School for the Deaf Trust reasonable access to inspect records, documents, and other trust property pertaining to the trust. The primary beneficiary representative's designee shall maintain confidentiality where confidentiality is required of the trustee;
- (n) Respond in writing within a reasonable time to a request by the board or the primary beneficiary representative's designee regarding the school trust, the Institution for the Blind Trust, and the School for the Deaf Trust for responses to questions on policies and practices affecting the management of the trust.
 - Response to 09 Mayer vs. Winkelman case in Arizona
 - This is the most fundamental and basic trust law protection

4. Chairman's Report (cont'd)

a. Beneficiary Report (cont'd)

i. School Children's Trust Bill (cont'd)

- Has been revised based on feedback from administration to not be overbroad
- Open to any further drafting suggestions if concerns

4. Null and Void

53C-4-102

- Trust lands may not be sold for less than the fair market value. If a court finds that the disposition of trust lands or an interest therein has been made for substantially less than fair market value, the court shall declare that disposition to be null and void.

Lack of Remedy

- Mathis Case 2009
- State Constitution: State to Indemnify Trust Against Loss or Diversion
- Doyle Example
- Potential Business Concerns
- Open to Drafting Feedback

5. School Children's Trust Section Funding

53CA-16-101-5

- (c) The Legislature shall annually allocate, through an appropriation to the State Board of Education, a portion of the ~~School LAND Trust Program money for the administration of the program~~ Interest and Dividends Account established by Section 53A-16-101 to be used for the School Children's Trust Section to administer the program and perform the other duties as defined by State Board Rule. Any unused balance shall be deposited in the Interest and Dividends Account for distribution to schools in the School LAND Trust Program.
 - Small Change to Existing Practice
 - Currently @ 75% is allocated from the distribution this way
 - USOE funds 25% a year from unused MLA Money
 - This would make all funding come from the distribution

Mr. Cononelos referred to the second provision regarding nominating committee and asked about livestock as a generic definition and would it be the Farm Bureau. Ms. Bird indicated the Farm Bureau would like to modify the proposal when it gets to the legislature to say the Farm Bureau will make that appointment. Mr. Ure opposed the appointment option going to the Farm Bureau Association. Director Carter pointed out that right now, as it reads, the livestock industry is not a recognized group so no one is defined to make the nomination. Chairman Brown asked if it is the intent of the proposal to take the nomination away from the Governor and give it to the various industries. Mr. Menlove responded that was correct.

Director Carter indicated it needs to be clear who will make the appointment. Karen Rupp provided background that it can take many months for the Governor's office to provide nominations. The way it is working now needs to be fixed and this proposal tries to do that. Director Carter suggested possibly the Dean of Agriculture at Utah State could represent the livestock industry.

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4. Chairman's Report (cont'd)

a. Beneficiary Report (cont'd)

i. School Children's Trust Bill (cont'd)

Chairman Brown reminded the group that the objective is to provide a more expeditious way of making the appointments.

Kim Christy has served on the nomination committee and represented Farm Bureau/livestock at the time. They tried to make sure the cattlemen's and wool grower's groups were all represented. Mr. Christy also added that the Department of Agriculture provides representation of the various organizations. He added one consideration could be the Utah Association of Conservation Districts.

Ms. Bird suggested the same alternating process with the University of Utah and Utah State University concept to address this issue and alternate between two sources of representation.

Director Carter suggested the issue has already been addressed similarly with the Department of Natural Resource after consultation with wildlife and conservation, makes the nomination. Why not have the Commissioner of Agriculture, after consultation, make this appointment for livestock.

Director Carter also added that this is a group of 11 people that meet to nominate names for the Governor to appoint. Of the 11, the State Board of Education has five choices and higher education has one. So six of the 11, for the majority, are controlled by the beneficiaries. The other five were essentially required for input to allow the process to continue.

Mr. Donaldson explained the last item in the power point presentation was the Arizona court case of Myers vs. Winkelman regarding easements to states without compensation and the Supreme Court case known as the Lassen case. The beneficiaries lost this case. The most alarming part was regarding beneficiaries getting information from the agency, etc. Therefore, our beneficiaries have added language to the Trust lands statute that will allow them to get information. This has not been a problem with current Staff, but they want it in statute to make sure it would always be possible for the beneficiaries to get information.

Chairman Brown asked about increasing value after the property is sold and developed. He added it is not clear that there is a statute of limitation of what can be deemed a situation for a suit. John Andrews indicated the statute of limitation would be eight years.

Ms. Bird added that the terminology would be based on the time of the sale, not future changes that increased the property value. Chairman Brown indicated that, if this were not removed, he would still be concerned with the wording not being clear.

Mr. Donaldson reminded the Board they are going to take out § 53C-4-102. This is a constitutional issue and cannot be changed here.

4. Chairman's Report (cont'd)

a. Beneficiary Report (cont'd)

i. School Children's Trust Bill (cont'd)

Chairman Brown asked if the Board will offer support to changes outlined in the School Children's Trust Bill proposal, less the section on Sale of Trust Lands (53C-4-102).

Ure/Ostler. Unanimously approved.

"I move that we support the changes defined in the School Children's Trust Bill, less the section on Sale of Trust Lands."

Roll Call:

Mr. Ure - - yes	Mr. Cononelos - - yes
Mr. Ostler - - yes	Mr. Lekas - - yes
Mr. Brown - - yes	

b. Appointment to State Treasurer's Investment Advisory Council

Chairman Brown explained the role of the individual appointed to the State Treasurer's Investment Advisory Council. The Board of Trustees is to make this appointment once every four years. The Chairman asked for nominations.

Ure/Cononelos: Unanimously approved.

"I move that we nominate Mr. Steve Ostler as a member of the State Treasurer's Investment Advisory Council."

Roll Call:

Mr. Ure - - yes	Mr. Cononelos - - yes
Mr. Ostler - - yes	Mr. Lekas - - yes
Mr. Brown - - yes	

5. Consent Calendar

Notification:

a. Proposed Negotiated Sale with Mr. James Hanley (PS 7801)

Chairman Brown expressed concern that a sale is being made to someone who acted as a squatter. However, the sale may be a good decision, but it is unfortunate that this has happened.

Mr. Christy stated the damage was done on about 20 acres, but we do not want to leave an unmanageable parcel by only selling the 20 acres.

5. Consent Calendar (cont'd)

Notification:

a. Proposed Negotiated Sale with Mr. James Hanley (PS 7801) (cont'd)

Mr. Lekas referenced the aerial photograph of the property and noted there is another parcel of trust land that is overlapped by Mr. Hanley's pivot system. Mr. Lekas asked if he had a surface use permit for that parcel and why ignore that trespass? Is this action sending a message that, because of trespassing and having taken unauthorized use of trust land, the solution is to write a lease to use it since the agency has no choice now?

Director Carter pointed out that Mr. Hanley will be charged trespassing fees. He will pay a penalty and be forced to lease the property he is now trespassing on. If he does not lease the land he overlaps, he would have to dismantle the pivot.

Mr. Lekas also asked why there were no trespass penalties assessed on the sale of the land. He has benefited from unauthorized use of the land, and there is a concern with additional liabilities; yet, there is a proposal for a fair-market value sale. Mr. Lekas felt there should be some penalty included in the sale price.

Director Carter reported that the sale diminishes our liability. There was a point beyond which we could convince them to purchase the property. In weighing those considerations and forcing him to buy more than he needed rather than leaving the agency with an unattractive revenue property, the agency felt that was the best deal to make. The other piece that is an agriculture trespass does not have hazardous materials on it, so that does not need to be sold. He can be asked to dismantle the pivot and have him pay us trespassing fees or lease it to him and pay the trespassing fees. Later, the property can be sold for at least market value.

Mr. Lekas asked if the agency would lease the small piece or lease him the entire piece. Director Carter indicated this would be a lease for only the part his pivot overlaps. Mr. Lekas asked if Mr. Hanley might be trespassing on other SITLA lands. Mr. Christy reported Mr. Hanley has adjoining private property. The land is less than marginal.

Chairman Brown asked if the contamination is extensive and does Mr. Hanley have assets to cover the costs to clean it up? Indemnification clauses are not reliable, so we could end up as the deep pockets to have to clean up the hazardous materials. Mr. Christy pointed out that the testing done at the time of sale shows that there is not sufficient contamination that will impact community health. There is some soil contamination, and it is a huge trash heap.

Chairman Brown asked what liability we are trying to rid ourselves by the sale. Mr. Christy responded it was the soil contamination. Director Carter pointed out that the testing done at the time of sale is that it is not now affecting the water table. Mr. Lekas pointed out that, if we evicted him from the property today, it would stop that threat of contamination. Director Carter pointed out that the agency would have to spend a significant amount of money to clean up what is there now. By doing the assessment now, we can say what the condition was when it left the agency's hands and that is where our liability ends.

5. Consent Calendar (cont'd)

Notification:

a. Proposed Negotiated Sale with Mr. James Hanley (PS 7801) (cont'd)

Chairman Brown asked John Andrews if an indemnification clause would protect the agency from the cost of cleanup? Mr. Andrews indicated Mr. Hanley does have some land assets, but this is a classic scenario without a winning solution. This is not a perfect solution, but it is a solution.

Ms. Bird asked about the appearance of a trespasser benefitting. She agreed with Mr. Lekas's comments, and this could happen to us in many areas. There is no assessment of cleanup costs to consider.

Mr. Lekas asked if this individual is a chronic problem or is there more background information? Mr. Christy reported that he is the incumbent grazing permit holder on the property. This problem was discovered in some aerial photos about a year ago. He has a reputation of being a sloppy landowner. The property where his home sits is divided from trust lands by a road. We are not sure he was aware he was trespassing, as this land is adjacent to a corner of his property. Mr. Lekas asked if Mr. Hanley offered any alternative solutions when he became aware he was trespassing? Mr. Christy indicated he is accepting of this sale of the land in response to the discovery.

Mr. Christy mentioned there have been grazing rights with this individual. He is known as a bad land owner. He has been asked to clean up the land.

Mr. Lekas asked if the arrangement could include a short time on his agriculture lease to allow us to monitor his activity on the land. The suggestion was accepted as good advice. Mr. Christy pointed out this is a cash sale and will not extend over time, and the lease can be defined on short terms to allow assessments.

Mr. Lekas expressed that he is not comfortable with the sale as it is moving forward. It seems clear the liability may not end with the sale. By selling the land to Mr. Hanley today, even though the land has been assessed, the contamination will continue. The agency may have to fight the battle at some later time. Mr. Lekas asked if the agency is truly accomplishing what it set out to accomplish?

The Chairman requested that this issue come off the consent calendar and be presented to the Board again on a future agenda.

Other:

Chairman Brown asked that Board packet material be provided electronically. Those who would like to receive the packet in hard copy can notify Nannette Johnson.

Upon motion to adjourn by Mr. Ure, the Board adjourned at 11:03 a.m.